

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN CINDY YOUNKIN**, on January 15, 2001 at 3:00 P.M., in Room 152 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Cindy Younkin, Chairman (R)  
Rep. Rick Dale, Vice Chairman (R)  
Rep. Gail Gutsche, Vice Chairman (D)  
Rep. Keith Bales (R)  
Rep. Dee Brown (R)  
Rep. Gilda Clancy (R)  
Rep. Aubyn A. Curtiss (R)  
Rep. Larry Cyr (D)  
Rep. Bill Eggers (D)  
Rep. Ron Erickson (D)  
Rep. Christopher Harris (D)  
Rep. Joan Hurdle (D)  
Rep. Rick Laible (R)  
Rep. Jeff Laszloffy (R)  
Rep. Douglas Mood (R)  
Rep. Bob Story (R)  
Rep. David Wanzienried (D)

**Members Excused:** Rep. Linda Holden (R)

**Members Absent:** Rep. Rod Bitney (R)  
Rep. Brett Tramelli (D)

**Staff Present:** Holly Jordan, Committee Secretary  
Larry Mitchell, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 114, 1/4/2001; HB 129,  
1/4/2001; HB 159, 1/4/2001  
Executive Action:

**HEARING ON HB 159**

**Sponsor:** REP. STEVE VICK, HD 31, Belgrade

**Proponents:** Larry Watson, Board of Commissioners of Gallatin  
County & West Yellowstone Solid Waste Board  
Mona Jamison, Gallatin County  
Bud Clinch, Department of Natural Resources  
John Tubbs, Department of Natural Resources

**Opponents:** Tom Earl, Great Falls  
Tom Daubert, Montana Solid Waste Contractors

**Opening Statement by Sponsor:**

***{Tape : 1; Side : A; Approx. Time Counter : 0.8}***

REP. STEVE VICK, HD 31, Belgrade, stated that the purpose of this bill is to authorize low-interest loans out of the state revolving fund for composting facilities. He then summarized the bill. He stated that composting projects have to go through the DEQ and the DNRC in the process of qualifying for one of these loans.

**Proponents' Testimony:**

***{Tape : 1; Side : A; Approx. Time Counter : 4.2}***

John Tubbs, DNRC, stated that the purpose of this loan is to provide the most affordable financing for the composting facilities in the state. It does make loans available for both public and private entities. The interest rate would typically be 4% whereas in the public market you would pay approximately 6%. The composting facility in Gallatin County is the prime facility the department has been looking at while drafting this bill. He spoke of the amendments in this bill.

Larry Watson, Board of Commissioners of Gallatin County & West Yellowstone Solid Waste Board, explained to the committee why the composting projects should be eligible under the state revolving fund program.

Mona Jamison, Gallatin County, pointed out on page 2, lines 6, 7 & 12, and said that this is the focus of Gallatin County's support. She stated that the lowering of the interest rate by 2% saves the Yellowstone Refuse District \$500,000 over 20 years. She urged the committee's support of the bill.

**Opponents' Testimony:*****{Tape : 1; Side : A; Approx. Time Counter : 11.5}***

**Tom Daubert, Montana Solid Waste Contractors,** stated that they have some philosophic problems with the bill. They also have a problem with the way the legislative council, in developing this bill, struck existing language that had nothing to do with composting and reworded the language and put it in elsewhere. He gave some background on the existing statute to assist in understanding why the language is there. He also stated that, in practice, the loans will not be available to the private sector. Primarily the bill is talking about subsidies for local government. These projects are not vital, important to water pollution issues or in areas where there is no private sector available to provide the service for the public good. This would give a new, unfair, competitive advantage to local governments regarding solid waste. The language that is already in statute does not permit for an advantage to these governments. Garbage trucks and solid waste have nothing to do with water pollution which was the original purpose for the money. The existing statute allows revolving funds to be used for closure and post closure of landfills, in small communities, which do deal with water pollution. He stated that they do support the existing statute that allows small landfills to get support through this funding. **Mr. Daubert** pointed out that composting is not at the top of the list of things that relate to water pollution which is the first purpose of this money.

**Tom Earl, Great Falls,** stated that he owned the very first private composting facility in Montana. That facility was put out of business by the city of Great Falls who, one year later, opened an operation that was subsidized with taxes. In his operation he bought a lot of equipment that was added to the tax base for Montana and paid personal property tax on the business. The city was able to offer lower prices to force closure of his business. He believes the government was inefficient in composting and should never have been in the business. He doesn't think they should be rewarded with a stronger competitive advantage against private enterprise by giving them a cheaper interest rate. He believes the water pollution revolving fund should be kept for water pollution.

**Questions from Committee Members and Responses:*****{Tape : 1; Side : A; Approx. Time Counter : 19.2}***

**REP. BROWN** asked **Larry Watson** if the city of Yellowstone already had taxing authority through Montana statute. She also asked

what does the federal government, knowing this is a gateway to Yellowstone National Park, contribute to this project or how do they help in treating the waste in the West Yellowstone Area?

**Mr. Watson** answered yes they do have a taxing authority through Montana statute. Regarding the waste, **Mr. Watson** answered, presently 2/3 of the waste coming into the tipping station, in West Yellowstone, comes from Yellowstone National Park. He then explained what would happen to the waste with the opening of the composting facility. **REP. BROWN** followed up asking if, rather than bringing the waste or compost outside the park, they are going to go through the park? **Mr. Watson** stated that they will truck within the park to the West Yellowstone tipping station instead of taking it to Livingston.

**REP. HARRIS** asked **REP. VICK** what his thoughts were on these funds putting the private sector out of business. **REP. VICK** stated that it was a concern of his because he does think it is inappropriate for government to compete with private business. The work that he has done shows that composting in the West Yellowstone area is not currently being done by anyone or by any private enterprise. He also stated that, in this case, the good outcomes outweigh the bad. Followup - would your answer change if there were private enterprise in the composting industry. Yes, if there were private composting facilities in this area then it would be my recommendation that the county use those.

**REP. LASZLOFFY** asked **John Tubbs, DNRC**, about the profitability of public composting facilities. **Mr. Tubbs** stated that the governmental entities do not make profit, they basically break even on these. The composting reduces their cost and they're able to take that cost reduction and build the facility. It is a non-profit center.

**REP. LASZLOFFY** asked **Mr. Earl** what should we do about these areas where there is not a private sector? **Mr. Earl** answered that it would be impossible for a private sector to go into business against a non-profit, government entity. Followup - if nobody wants to open a private composting facility what should those counties do? The government should solicit a private contractor to open a facility.

**REP. ERICKSON** asked **John Tubbs** does someone else lose if this project is funded? **Mr. Tubbs** answered no, right now the fund has exceeded the demand for the loans so they have yet to use the priority system. As long as there isn't excess demand for available funds, we fund anyone on the list. Followup - what does the priority list show? Is this subject fairly low down on the list? Yes, it is not anywhere the top of the list.

**REP. MOOD** asked **Mr. Earl** if there is a market, within reasonable distance from West Yellowstone, for the finished compost? **Mr. Earl** stated no, the population is too small and it would cost more to haul than the compost is worth. 400 yards of waste = 100 yards of compost and the average wholesale price is \$20.00 per cubic yard.

**REP. MOOD** asked **Mr. Daubert** about the stricken language from the bill. **Mr. Daubert** stated that the language is not being taken out so much as being reworded and changed.

**REP. WANZENRIED** asked **Mr. Watson** where the compost is going to go after it is produced, and if there is a market readily available that you can sell this to? **Mr. Watson** answered that they anticipate contracts with the U.S. Department of Interior, the Forest Service, Gallatin County, etc.

**REP. STORY** asked **John Tubbs**, as stated by one of the opponents, although this program is available for both public and private applicants, the public applicants seem to have an advantage in the application process, are there private applications? **Mr. Tubbs** stated that it goes to the growth and health of the SRF programs. The department started to make private loans last year in the water development loan program. About 20 loans were made in the last year. It may be harder to fund private composting facilities as the loans have to be secured by 150% of the loan, in real property, and most private enterprises don't have the assets to secure against.

**REP. BALES** asked **Mr. Tubbs** to explain the tie between compost facilities and how it ties in with the clean water act. **Mr. Tubbs** stated that with landfills come environmental controls as they are a source of groundwater and surface water pollution so compost facilities could be run more efficient.

**REP. LAIBLE** asked **Mr. Watson**, is the renewable resource compost, and what do you do with the finished product. **Mr. Watson** answered yes, it is the renewable resource. When it is finished it looks like a rough grade Copenhagen, it is 3/4 of an inch and most of it is bagged. It is usable for commercial landscaping, road building, etc. Followup - what would the composting facility cost? About \$2.2 million. Followup - so you are going to fund this through this program if it passes and if not do you already have funding in place? Yes, we have been awarded a \$2 million loan through the DNRC at 6%.

**REP. LASZLOFFY** asked **Mr. Daubert** how this legislation would affect the composting facility EKO Compost in Missoula, would it

affect them as negatively as it did with Mr. Earl? **Mr. Daubert** stated that he is not sure but he would be surprised if it didn't.

**REP. GUTSCHE** asked **Mr. Watson** approximately how many cubic yards of compost would come from the 70% of the Yellowstone garbage which was estimated as compostable? **Mr. Watson** answered that he did not have that information right off the top of his head. Followup - what is the capacity of landfill nearest to you and how full is it? We are in a good position there for about another 8 years. Followup - estimate how much building this compost facility would save from the landfill annually. It would be cut in half. I will get you the exact numbers  
**EXHIBIT(nah11a01)**.

**Closing by Sponsor:**

***{Tape : 1; Side : A; Approx. Time Counter : 53.3}***

**REP. VICK** stated that this bill would be good for the environment and the taxpayers and seems like a good idea. He hopes for a do pass.

**REP. YOUNKIN** made a second call for anyone at the meeting to testify on HB 46. Seeing none she postponed the hearing until further notice.

**HEARING ON HB 129**

**Sponsor:** **REP. KEITH BALES, HD 1, Otter**

**Proponents:** **Gail Abercrombie, Montana Petroleum Association**  
**Bud Clinch, Department of Natural Resources (DNRC)**  
**Mike Murphy, Montana Water Resource Committee (MWRC)**  
**John Youngberg, Montana Farm Bureau**

**Opponents:** None.

**Opening Statement by Sponsor:**

***{Tape : 1; Side : A; Approx. Time Counter : 54.5}***

**REP. KEITH BALES, HD 1, Otter,** stated that this bill addresses a problem in the permitting process for water wells. It is designed to simplify a procedure to allow for getting a priority date on well that has been abandoned or drawn dry.

**Proponents' Testimony:*****{Tape : 1; Side : A; Approx. Time Counter : 57}***

**Bud Clinch, DNRC,** stated that there has been a small problem that has to do with when existing wells go dry and the owners are forced to drill a new replacement well. This bill allows a replacement well to assume the historic priority date of the well that it replaces. Under current law, the owner of a replacement well has to apply to DNRC for a change authorization even if the new well is only a few feet away from the old well. The DNRC processes about 50 change applications a year in such situations. So long as the well is for the same small amount of water (under 35 gallons per minute) and taps the same aquifer and that the old well that is no longer being used, there should be no potential for adverse effects to other water right holders. Larger wells would not be exempt from this new change in review requirements just as large new wells are not exempt from existing permit requirements. HB 129 allows people who have to drill small replacement wells to use a simpler form to change their existing water right to the new well, they would no longer have to approve the adverse effect of the replacement well and they will have the ability to transfer the priority date. It allows the DNRC to charge a lower fee for these types of applications and waive public notices. This is a good government action.

**Mike Murphy, MWRA,** supports HB 129.

**John Youngberg, Montana Farm Bureau,** stated that they think this is a good way to go and makes replacing a well a bit easier.

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:*****{Tape : 1; Side : A; Approx. Time Counter : 61}***

**REP. YOUNKIN** commented that the additions beginning on page 5, line 7, are exactly the same as they appear in the next two temporary sections. This is because there are three temporary sections that have effective dates at different times.

**REP. BROWN** asked **Mr. Clinch** if this bill applies to surface water. **Mr. Clinch** stated no, it is specific to replacement wells, under 35 gallons per minute.

**REP. STORY** asked **Mr. Clinch** if the department will require the applicant to plug the old well. **Mr. Clinch** referred the question to **Jack Stultz, water resources division administrator, DNRC,** who

stated that any abandoned well must be plugged as stated in a different set of statutes. **{Tape : 1; Side : B; Approx. Time Counter : 1.7}**. Followup - that may be the case but would there be a problem in making mention of that in this legislation to make sure that gets done. **Mr. Stultz** stated that there would not be a problem with referencing the other statutes about abandoning a well and he will do that before executive action.

**REP. LAIBLE** asked **Mr. Clinch** if there is a time limit from the time the well has been abandoned until a new well could be drilled? **Mr. Clinch** redirected the questions to **Mr. Stultz** who stated that nothing specifically prevents someone from coming in to an abandoned well and wanting to drill a new well and to transfer the rights over when, in fact, that really wasn't an issue of abandonment, it just may not have been in use. If they do want to drill a new well they have to apply to the department within 60 days, that's the only time limit in there. Followup - **Mr. Stultz** do you see any risk in this? There may be a risk, we would have to review that risk when the person came to us. If it was clear that the well had been abandoned and not used for an extended period of time then we would question if they could really make use of this. There are certain guidelines, set by the water board and statute, that we can follow. Followup - would it maybe solve future problems if there was a time limit in the bill? **Mr. Stultz** stated that he doesn't know exactly what the best time frame would be to put into a statute like this.

**REP. YOUNKIN** asked **Mr. Stultz** if there is currently a statute in place that says you can abandon a water right in 10 years. **Mr. Stultz** stated yes, 10 years following the issuance of a final decree.

**REP. HARRIS** commented on the current statute regarding abandonment. He then asked if the existing statutory definition of abandonment is clear enough that we can draw from that if we choose to amend this bill. **Mr. Stultz** answered that the risk is small and it is not something the department foresees as a problem, yet the risk is still out there. Followup - we could add language that would allow someone to take advantage of this opportunity but not be able to abuse it. **Mr. Stultz** stated that they could draft something like that and make it part of the amendment.

**REP. GUTSCHE** asked **Mr. Clinch** how many current change over operations were on abandoned wells? **Mr. Clinch** answered that, to his understanding, all of them were to replace current wells that had some sort of problem with them and none were for historically abandoned wells.

**Closing by Sponsor:**

***{Tape : 1; Side : B; Approx. Time Counter : 12.9}***

**REP. BALES** stated that he would be reluctant to support an amendment which tightens up the ten year statute on abandoned wells. He does support an amendment regarding abandoning the old well. This legislation makes it easier to go to a state agency regarding wells and we should all favor that.

**HEARING ON HB 114**

**Sponsor:** REP. ROBERT STORY, HD 24, Park City

**Proponents:** Bud Clinch, Department of Natural Resources (DNRC)  
Mike Murphy, Montana Water Resource Committee (MWRC)  
John Youngberg, Montana Farm Bureau

**Opponents:** None.

**Opening Statement by Sponsor:**

***{Tape : 1; Side : B; Approx. Time Counter : 15}***

**REP. ROBERT STORY, HD 24, Park City,** summarized the bill having three parts. These are: 1) an attempt to clarify what a developed spring is; 2) to eliminate the requirement for a county Clerk & Recorder's office to keep unnecessary forms on this issue; 3) clarify the procedure of going onto someone else's property to develop a water right.

**Proponents' Testimony:**

***{Tape : 1; Side : B; Approx. Time Counter : 17.9}***

**Bud Clinch, DNRC,** elaborated on the three points **REP. STORY** brought up. This bill clarifies some conflicting laws in existing statute and improves the existing water law. He urged a do pass of this bill.

**John Youngberg, Montana Farm Bureau,** questioned the definition of a developed spring and the difference of a developed spring vs. a well. Other than that they do support the bill.

**Mike Murphy, MWRC**, stated that they feel this is a clarification for the manner in which DNRC treats these developed springs. They are particularly supportive of the language that clarifies that no easement is perfected.

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:**

***{Tape : 1; Side : B; Approx. Time Counter : 24}***

**REP. BROWN** asked **Mr. Murphy** to explain who makes up Montana Water Resources and what is the base for it. **Mr. Murphy** stated that the association is comprised primarily of irrigation districts, water user associations and other entities associated with the use of water and water rights, some of our membership does include agricultural businesses, some of the rural electric throughout the state, Montana Power, now PPL, etc.

**REP. LAIBLE** asked **Mr. Clinch** to clarify the third section of the bill. **Mr. Clinch** explained that in order to build a water right on someone else's property you must first apply to the department for a water right and then, upon approval, secure permission from the landowner to go onto the private property, do the spring development and secure the authority to convey that water from that spring onto your property. Followup - what if I have an existing water right to that spring but the spring is old and full of sediment and I want to clean it out, do I have to go through the same process? That would depend on the language in your existing agreement to that water right. Followup - regarding page 2, line 20, is this now a well and what would artificially withdrawn be? The question was deferred to **Jack Stultz** who answered, artificially withdrawn is virtually the same as a well, administratively they behave the same.

**REP. WANZENRIED** asked **Mr. Stultz** to define the difference between a well and a developed spring. **Mr. Stultz** stated that there is no difference, administratively they are handled the same way. Followup - so why don't you just call a developed spring a well? It's just as confusing to do that as to keep them separate, we want to keep the two definitions separate for administrative purposes.

**REP. GUTSCHE** asked **Mr. Clinch** is it necessary to remove the requirement of forms in the Clerk & Recorder's office? **Mr. Clinch** stated that the majority of transfer of forms either occurs through telephone conversations, correspondence or electronic transfer from the department. This provision was at

the request of Clerk & Recorders that don't have any idea what these forms are. That process is obsolete and not necessary.

**REP. YOUNKIN** asked **Mr. Clinch** where the DNRC field offices are located. **Mr. Clinch** answered Missoula, Kalispell, Helena, Bozeman, Lewiston, Glasgow, Havre and Billings.

**REP. BROWN** asked **Mr. Clinch** how long is a turnaround for a water right when you apply? **Mr. Clinch** answered approximately 90 days for a simple water right (less than 35 gallons per minute).

**Closing by Sponsor:**

***{Tape : 1; Side : B; Approx. Time Counter : 37.8}***

**REP. STORY** hereby closes.

**ADJOURNMENT**

Adjournment: 4:43 P.M.

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REP. CINDY YOUNKIN, Chairman

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HOLLY JORDAN, Secretary

CY/HJ

**EXHIBIT** (nah11aad)